



SECTION:	Administrator
INDEX NO.:	A300-807
TITLE:	Electronic Communications between Plan Administrators and Plan Beneficiaries - PBA ss. 29(5) and 30.1 - Regulation 909 ss. 45(2) and 45(6) - Electronic Commerce Act, 2000
APPROVED BY:	Superintendent of Financial Services
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This policy replaces A300-806 (Electronic Communications between Plan Administrators and Plan Beneficiaries) as of the effective date of this policy.

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.

*Note: The electronic version of this policy, including direct access to all linked references, is available on the Financial Services Commission of Ontario's (FSCO's) website at www.fSCO.gov.on.ca. All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

The purpose of this policy is to explain the PBA requirements relating to electronic communications between pension plan administrators (administrators) and pension plan beneficiaries (plan beneficiaries). This policy is based on the PBA, the Ontario [Electronic Commerce Act, 2000](#) (ECA) and the Canadian Association of Pension Supervisory Authorities [Guideline No. 2: Electronic Communication in the Pension Industry](#) (CAPSA Guideline # 2).

The ECA was implemented in Ontario in order to remove legal barriers to the use of electronic communications in commerce and sets out rules for conducting business transactions electronically.

CAPSA Guideline #2 is intended to help administrators and plan beneficiaries apply the relevant provisions of the various provincial electronic commerce legislation to communications required under Canadian pension benefits legislation between administrators and plan beneficiaries.

It is FSCO's position that communications between administrators and plan beneficiaries that are required under the PBA may be provided electronically if they comply with the relevant requirements of the PBA, ECA and CAPSA Guideline #2. For example, an administrator may provide certain documents electronically to plan beneficiaries, such as the member annual statement, an explanation of pension plan provisions and prescribed notices, if the documents and their distribution comply with the relevant legislation and the general principles of the guideline.

ECA Delivery Requirements and Plan Beneficiary Consent

Section 30.1 of the PBA provides that an administrator may use electronic means that comply with the ECA to send out notices, statements and other records to members, former members, retired members and other plan beneficiaries. However, an administrator may only use such electronic means if the administrator has the person's "permission" to do so.

The permission requirement in section 30.1 of the PBA is consistent with the consent requirement in section 3 of the ECA. Section 3 of the ECA confirms the voluntary nature of the use and receipt of electronic communications, but also provides that consent may be inferred from a person's conduct, if there are reasonable grounds to believe that the consent is genuine and is relevant to the information or document.

Based on section 30.1 of the PBA and section 3 of the ECA, it is FSCO's position that "permission" under the PBA means either: (i) explicit consent; or (ii) deemed consent obtained in a manner consistent with section 3.0 of CAPSA Guideline #2.

In order to obtain deemed consent in a manner consistent with section 3.0 of CAPSA Guideline #2, an administrator must first inform the plan beneficiary of the following:

1. designation of an information system to the administrator for the purpose of receiving documents of the type sent constitutes deemed consent to receive such documents;
2. the plan beneficiary may revoke the deemed consent at any time, either in writing or electronically;
3. the plan beneficiary may request a paper version of any document by notifying the administrator;
4. the administrator will provide the plan beneficiary with a paper copy of any document if electronic delivery fails; and
5. the plan beneficiary may at any time change her or his designated information system by notifying the plan administrator either in writing or electronically.

For the purposes of section 30.1 of the PBA, "designation of an information system" means the designation for receipt of specific electronic communications by the plan beneficiary of a particular email address, password protected web portal, or other similar electronic communication address (Electronic Address).

Once a plan beneficiary has provided an administrator with an Electronic Address for receipt of specific types of electronic communications, the administrator may rely on the plan beneficiary's deemed consent until such time as it is revoked.

If administrators provide electronic communications to plan beneficiaries, they must comply with the other requirements and general principles of CAPSA Guideline #2. For example, if electronic delivery fails, a paper copy of the relevant document must be provided to the plan beneficiary.

Administrators are encouraged to use their best efforts to ensure that plan beneficiaries are receiving documents sent to them electronically. They should also ensure that plan beneficiaries are familiar with administrators' electronic communication processes. For example, an administrator may wish to encourage plan beneficiaries to confirm their current email address with the administrator from time to time, and to inform the administrator if they do not receive a specified document that has been delivered electronically.

Electronic Access Rights

Under section 29(5) of the PBA, the following people have specific access rights that entitle them, if they make a request in writing and pay a fee, to receive prescribed plan records from the administrator electronically:

- members, former members and retired members;
- spouses of members, former members and retired members;
- any other person entitled to pension benefits under a plan;
- member trade union representatives; and
- agents of any of the above people.

Each plan record may be accessed only once per calendar year, but more than one record may be requested at a time. This restriction does not apply to member trade union representatives.

Under section 45(2) of the Regulation, the prescribed records include:

- the current pension plan provisions, including any amendments to the plan;
- the latest actuarial reports filed with FSCO;
- the latest financial statements, or audited financial statements filed for the pension plan or pension fund;
- the latest actuarial information summary, annual information return and investment information summary filed with FSCO; and
- the latest statement of investment policies and procedures for the plan.

If a prescribed record is requested, the administrator must comply with the written request within 30 days of receiving the request. The administrator may charge a maximum fee of \$5 for each electronic delivery request, regardless of the number of documents requested.

In accordance with section 45(6) of the Regulation, a requestor is only entitled to have access to those parts of the pension plan and other documents or information that are applicable to them.